Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

counts as to require a reference. I see no error in the rulings of the court on this point.

For the errors in regard to the instructions, the judgment will be reversed and the cause remanded.

United States Circuit Court, Western District of Wisconsin.

HENRY PERKINS v. THE CITY OF WATERTOWN.

When the charter of a city authorizes suits to be commenced against it by the service of process upon the mayor, the courts of the United States are bound since the Act of Congress of June 1st 1872, to conform to the same manner of service.

State laws when adopted by Congress become obligatory on the Federal courts.

Service on the mayor elect before acceptance or qualification, is not a service on the mayor of the city.

Where there is no mayor nor acting mayor, service on the city clerk and city treasurer is not sufficient.

Courts must administer the law as they find it, and not supply defects in legislation when a difficult or hard case presents itself.

THIS was a motion to set aside as insufficient the service in the above-named and four other suits.

The facts appear in the opinion of the court.

W. F. Vilas and *D. Ordway*, for plaintiff.

Harlow Pease, for defendants.

The opinion of the court was delivered by

HOPKINS, D. J.—In one of the above-entitled cases, the summons was served by delivering copy to the mayor elect before he had accepted or qualified.

In other cases the summons was served on the city clerk and city treasurer, the marshal returning that there was neither mayor or acting mayor upon whom he could serve the same.

The charter of the city authorizes suits to be commenced against it by the service of process upon the mayor, and the question now presented is whether it can be served upon any other officer or party, so as to give this court jurisdiction.

Rule 30, of this court (Common Law), is as follows: "In suits against corporations the process may be served in the mode prescribed by the laws of the state. But a judge of the court, in peculiar cases, on motion may prescribe any other mode of service he may deem right and proper." This rule was adopted in 1870.

Under it authority is given (in peculiar cases) to a judge of the court to prescribe other modes of service, but in all ordinary cases it adopts the mode of service prescribed by the state statutes.

My associate expressed some doubt as to the power of the court to make such a rule originally, but that question not being necessarily before the court, no decision of it was reached. In these cases no order had been made changing the mode of service from that prescribed by the state statutes, but it was claimed by the plaintiffs that if an order could have been made authorizing service to have been made on the parties in fact served, the court could now ratify such service, and in that view the power of a judge to grant an order changing the statutory mode of service, since the passage of the Act of Congress of June 1st 1872, becomes material. It is claimed that it abrogates that part of the rule authorizing any other mode of service than is prescribed by the state statute.

The 5th section of the act above mentioned adopts the "practice, pleading and forms and modes of proceeding," as near as need be, of the state courts in common-law cases, and abrogates all rules of the Circuit or District Courts to the contrary. This court, by the rule itself above quoted, adopted the state mode of service, so that it cannot now consistently hold it to be impracticable to conform to that mode, and if it is practicable, by the act above quoted, it is exclusive. The state practice or mode is the rule now on the subject, and this court has no more power to authorize any other mode than the state courts have. State laws, when adopted by Congress, become obligatory on the Federal courts. There can be no doubt but that the service of process is a "mode of proceeding." Similar phraseology in the Act of 1792, 1 Statutes at Large 275, was construed in *Wayman* v. *Southhard*, 10 Wheaton 1 (6 Curtis 319), to include the service of process. The court there say: "It may, then, and ought to be understood as prescribing the conduct of the officer in the execution of process, that being a part of the proceedings in the suit." This would seem to settle the question that the service of process is within the meaning of the Act of June 1st 1872, and being so the mode of service prescribed by the state laws must be followed, and the power of this court to prescribe or substitute any other mode is necessarily abrogated.

Foreign creditors are placed by that act on equal terms with domestic creditors, and we do not see any reason why the Federal

courts should be appealed to or should grant any special advantages in their favor. The corporation is created by the state legislature, its powers and rights emanate from that source, and if there are defects in the organic law, it is for the legislature and not the courts, to correct them.

It was argued that by the original charter service of process might be on the mayor or clerk, and that the legislature could not alter the charter in that respect, after the issue of these bonds. That point we do not think well taken. It was not a part of the contract in any sense, and the legislature could prescribe a different mode without impairing the obligation of the contract.

The service on the mayor elect before acceptance or qualification, was not a service on the mayor of the city. We therefore think the service in each case was insufficient to give this court jurisdiction of the defendant.

It was stated and shown by the papers that there was no mayor or acting mayor upon whom service could be made under the state law; but that does not augment the power of this court, or confer upon it legislative authority. Courts must administer the law as they find it, not supply defects in legislation when a difficult or hard case presents itself.

Such considerations are to be addressed to the law-making power, not to the courts. But as the service in these several cases is wholly insufficient to give jurisdiction, these motions are unnecessary, and defendant is not entitled to any relief as it is not injured thereby. The plaintiffs may withdraw from the files the summons in each case, and redeliver them to the marshal for service according to law, if they wish to do so. And an order to that effect may be entered.

United States District Court, Northern District of Illinois.

FULTON v. BLAKE.

Consignees must provide such reasonable dock-room as their business ordinarily requires, and for failure to do so they are liable to damages in the nature of demurrage, whether so contracted in the bill of lading or not.

A consignee who has provided sufficient dock-room for vessels consigned to him as they usually arrive, is not at fault when from causes over which he has no control they all arrive together. He is not obliged to procure other docks; his vessels arriving out of the time when they ought reasonably to have been expected must await their turn at his docks.